

## Sixth Circuit: Emeritus Professor Status Does Not Create Constitutionally Protected Property Interest

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On December 5, 2023, the U.S. Court of Appeals for the Sixth Circuit **ruled** that emeritus status does not necessarily create a constitutionally protected property interest. *Peterson v Johnson*, \_F.4th\_, 2023 WL 8431635 (*for publication*, 6th Cir. 2023). Although the Sixth Circuit punted on the question of whether lost pay or harm to "tangible benefits" in connection with revocation of emeritus status could create a constitutionally protected property interest (because the plaintiff did not allege such damages), the appeals court held that reputational harms purportedly resulting from a loss of emeritus status, standing alone, do not create a protected property interest under the U.S. Constitution.

In 2018, Bradley Peterson, an astrophysicist, secured emeritus status at The Ohio State University after having retired from his previous tenured position in 2015. Three women later filed sexual harassment complaints against him. After investigation, the University determined that Peterson violated its Misconduct Policy, and ultimately revoked Peterson's emeritus position.

Peterson filed a one-count lawsuit in January 2022, alleging a violation of procedural due process.

He claimed the loss of emeritus status caused him various harms, including losing a textbook contract with a popular publishing company and his positions with external, non-University affiliated entities, in addition to permanent reputational damage. Peterson analogized his emeritus status to an employment privilege and asserted that he was entitled to some due process prior to its revocation. The U.S. District Court for the Southern District of Ohio disagreed, dismissing his complaint. *Peterson v. Johnson*, No. 2:22-CV-00276, 2023 WL 2586396 (S.D. Ohio Mar. 21, 2023).

The Sixth Circuit affirmed. It emphasized that emeritus status does not automatically confer employment status. The court highlighted two additional critical points: First, because Peterson did not allege lost pay or "material change" with his relationship to the university, his property interest argument rested on dubious footing. Second, Peterson's failure to request a "name-clearing" hearing after the university's investigation into his misconduct was fatal to his procedural due process violation claim.

It may be prudent for higher education institutions to review their bylaws and policies and procedures to ensure that emeritus status does not provide for assignment of traditional faculty duties, voting privileges in university governance decisions, participation in promotion, tenure, and other administrative decisions, or any other specific tangible benefits.

Should you have any questions about this case or its implications for your institution of higher learning, please do not hesitate to contact the authors of this article or your Miller Canfield attorney.